

**UNITED STATES DISTRICT COURT**  
EASTERN DISTRICT OF CALIFORNIA

RAYMOND E. PEYTON,

Plaintiff,

v.

BRIAN CATES,

Defendant.

Case No. 1:22-cv-00151-EPG

ORDER DIRECTING CLERK OF COURT  
TO CONVERT CASE TO CIVIL RIGHTS  
ACTION PURSUANT TO 42 U.S.C. § 1983

On February 3, 2022, Defendant Cates commenced the instant proceeding by filing a notice of removal of the state court action Peyton v. Cates, No. BCV-21-101937, that had been filed in the Kern County Superior Court. (ECF No. 1). In the notice of removal, Defendant states: “This is a civil action of which this Court has original jurisdiction under 28 U.S.C. § 1331, and is one which may be removed to this Court by Defendant under 28 U.S.C. § 1441(a) because it arises under 42 U.S.C. § 1983—a federal statute—and includes claims under the Eighth Amendment to the United States Constitution.” (ECF No. 1 at 2). Defendant has paid the \$402 civil case filing fee.

When Defendant filed the notice of removal, counsel designated the “Nature of Suit” as “530 Habeas Corpus (General).” However, as noted above, the notice of removal indicates that the suit arises under 42 U.S.C. § 1983, and Defendant has paid the \$402 civil case filing fee rather than the \$5 habeas filing fee.

1 Accordingly, the Clerk of Court is DIRECTED to CONVERT the instant matter to a civil  
2 rights action pursuant to 42 U.S.C. § 1983.<sup>1</sup>

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4 IT IS SO ORDERED.

5 Dated: **February 7, 2022**

/s/ Eric P. Grogan  
6 UNITED STATES MAGISTRATE JUDGE

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<sup>1</sup> The Court notes that it is not making any legal determinations regarding whether the appropriate vehicle for the issues raised in this matter is a § 1983 civil rights action or a habeas corpus petition.